Georgia Tech (GT) Enterprise Innovation Institute
Confirmation of Service Terms & Conditions

Section 1. Term.

1.1 GT will perform the specialized services (the "Services"), as described in the Confirmation of Services. Services will be performed by Faculty & Staff Members (employees, independent contractors, subcontractors, consultants and student assistances) of GT.

Section 2. Payment; Contract Cost Limitation.

2.1 As consideration for the Services provided by GT, Company shall pay GT as described in the Confirmation of Services. Company shall be responsible for any and all fees associated with reimbursement. GT may choose to discontinue performance if Company fails to pay as specified in the Confirmation of Services.

Section 3. Reports.

3.1 GT will provide Company one or more reports summarizing the Services or as otherwise expressed in the Confirmation of Services.

Section 4. Publicity.

4.1 Except as otherwise provided herein, Company shall not use the names, marks, or logos of GT without GT's prior written permission and GT shall not use the names, marks, or logos of Company without prior written permission. Any joint marketing program(s) will be pursuant to a separate written agreement and have prior written approval and final copy approval by both parties. GT may, however, include Company's name in published listings of GT programs or services offered or as otherwise required by law, including the Georgia Open Records Act.

4.2 Notwithstanding anything herein, Company shall in no manner whatsoever state or imply support, endorsement or sponsorship by GT in any of Company's materials or in connection with any of Company's activities, including, but not limited to, advertising, promotions, or marketing.

4.3 The provisions of this Section will survive any termination of the Confirmation of Services.

Section 5. Intellectual Property.

5.1 Company will not receive title or a license to use any intellectual property of any kind whatsoever, developed by or used by GT, in the performance of Services

Section 6. Publication.

6.1 GT may catalog and place reports of the Services in the GT Library, and they may issue publications based on the Services and use any results not proprietary to Company in their research and education programs. GT will give Company an opportunity to review any report or publication, will not knowingly include any of Company's proprietary information in the report, and will upon Company's request withhold publication for up to 6o days.

Section 7. Disclaimer.

7.1 **GT DISCLAIMS ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES (INCLUDING COPYRIGHTABLE DELIVERABLES) RESULTING THEREFROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, OR NONINFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.**

Section 8. Limitation of Liability.

8.1 The cumulative liability of GT to Company for all claims, demands or actions arising out of or relating to this Agreement, the Services to be performed hereunder and any deliverables resulting therefrom, will not exceed the total amount paid to GT hereunder during the twelve (12) months immediately preceding such claim, demand or action. Without limiting the foregoing, in no event shall GT be liable for any business expense, machine down time, loss of profits, any incidental, special, exemplary or consequential damages, or any claims or demands brought against Company or Company's customers even if GT has been advised of the possibility of such claims and demands. The foregoing limitation of liability will survive any termination of this Agreement and will apply without regard to any other provision of this Agreement which may have been breached or have been proven ineffective.

Section 9. Termination.

9.1 Either Party may terminate this Agreement for any reason upon thirty (30) days written notice to the other.

9.2 Company shall pay GT any costs which have accrued or been encumbered up to the actual date of termination under this Section and Company will not be relieved of the obligation to pay those costs because of a termination under this Section.

Section 10. Export Control.

10.1 Company understands and agrees that GT's performance under this Agreement and any and all information provided or exchanged shall be in compliance with all applicable United States export control laws (EAR/ITAR) including "deemed exports". The transfer of certain technical data and commodities may require a license from a government agency or written assurances by Company that Company will not re-export data or commodities to foreign countries without prior approval of the appropriate U.S. Government Agency. GT agrees to cooperate with Company in securing any such license necessary in connection with this Agreement.

10.2 Deemed export means any release of technology to a foreign national within the United States. Technology is released for export when it is (i) made available to foreign nationals for visual inspection, (ii) exchanged orally, or (iii) made available by practice or application under the guidance of persons with knowledge of the technology. The obligations of this section shall survive any expiration or termination of this Agreement.

Section 11. Miscellaneous.

11.1 All notices and other communication given under this Agreement will be effective five (5) days following deposit in the United States mail, postage prepaid and addressed to the parties at their respective addresses set forth in the Confirmation of Services unless by a previous notice a different person or address has been designated.

11.2 GT and Company are and will remain independent contractors and nothing herein will be construed to create a partnership, agency or joint venture between the Parties for federal and state law purposes. Each Party will be responsible for wages, hours and conditions of employment of its respective personnel during the term of, and under, this Agreement.

11.3 All questions concerning the validity, operation, interpretation and construction of this Agreement will be governed by and determined in accordance with the laws of the State of Georgia, USA.

11.4 All Services performed under the Confirmation of Services will comply with all applicable policies, laws and regulations. Further, the parties agree that compliance with any such laws and regulations which adversely affect Services and/or performance of under the Confirmation of Services shall not constitute a breach of these terms or the Confirmation of Services.

11.5 No waiver by either Party of any breach of any provision hereof will constitute a waiver of any other breach of that provision or of any other provision hereof.

11.6 This Agreement and the Confirmation of Services sets forth the entire agreement and understanding between GT and Company and merges all prior discussions between the Parties pertaining to the subject matter hereof; and neither Party will be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof except as expressly provided herein or in writing. This Agreement may not be modified or altered except by a written document executed by authorized representatives of both Parties. No provision contained in any standard form document issued by Company, including but not limited to any Confirmation of Services or confirmation order, will be applicable, even if signed by the Parties, unless the Parties also execute a separate document expressly modifying this Agreement to include such provisions.